IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

MFA. No. 156 of 2005

WCC.273/1999 of W.C.C.,THRISSUR
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APPELLANT: 2ND OPPOSITE PARTY

NATIONAL INSURANCE COMPANY LTD.,
COIMBATORE NOW REPRESENTED BY ITS DEPUTY MANAGER,
KOCHI, REGIONAL OFFICE, AJAY VIHAR,
M.G. ROAD, KOCHI-16.

BY ADV. SRI.MATHEWS JACOB (SR.)

RESPONDENTS: APPLICANT AND 1ST OPPOSITE PARTY
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1. CHAMIYAR (DIED),

2. DEVU, W/O.CHAMIYAR,
MANNAMPARAMBU, KANNEMBRA P.O., ALATHUR TALUK.

3. J.DAVID, S/O.JAYASEELI,
46 BISHOP XAVIER COLONY, SAMIYAR NEW STREET,
NO.2 FORT, COIMBATORE.

BY ADV. SRI.C.RAGHAVAN

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & A.K. BASHEER, JJ.

M.F.A. No 156 of 2005

Dated: 11th September 2007

JUDGMENT

Radhakrishnan, J.

This appeal has been preferred by the Insurance Company aggrieved by the amount awarded by the Tribunal.

2. Claimants are the widow and son of deceased Ravi. Deceased was working as driver in a tempo van No TN 07/B.8502 owned by the first respondent before the Tribunal. While the tempo van was proceeding towards Anjumoorthymangalam it lost control and hit against a tree standing on the side of the road and the deceased sustained serious injuries. He was admitted to Alathur Government Hospital and he succumbed to the injuries on the same day. Claimants had preferred the application claiming a total amount of Rs 2,16,910/-.

3. Deceased was earning Rs 3,500/- per month and was 25 years of age at the time of the accident. The vehicle was insured with the second opposite party and there was a valid insurance policy. Claim was resisted by the Insurance Company stating that he was not a workman of the first

opposite party but was only a workshop mechanic. Commissioner after examining the oral and documentary evidence came to the conclusion that deceased was the driver of the vehicle owned by the first opposite party. Evidence adduced by the claimants was considered by the Commissioner. Considering the fact that the deceased was the driver of the vehicle at the time of the accident and he was working as driver there was employer-employee relationship between the first opposite party and the deceased. Commissioner also found that the accident occurred out of and in the course of his employment. In such circumstances Commissioner has awarded a sum of Rs 2,16,910/-.

4. Learned counsel for the Insurance Company submitted that there is no evidence to show that the deceased was the driver of the first opposite party. On the basis of the available evidence Commissioner has held otherwise. No reliable evidence was adduced before the Commissioner. In such circumstances the appeal lacks merits and the same is dismissed. We find that the Commissioner has awarded interest at the rate of 12% from the date of the accident. We are of the view, claimants are entitled to get interest only from the date of the order going by the decision of the apex court in National Insurance Company Limited v. Mubasir Ahmed (2007 (3) KLT 26). Claimant is therefore entitled to interest only from the dat e of

the order. The order passed by the Commissioner is modified holding that the claimants are entitled to interest only from the date of the order till date of payment at 12% per annum. Appeal is disposed of as above.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-
A.K. BASHEER
Judge

en/

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